

Respondent appeals arguing the ALJ exceeded his jurisdiction in ordering respondent to pay for a king size Sleep Number bed, household cleaning supplies and increased internet service, all as medical treatment.

Claimant contends the ALJ should be affirmed.

The issue on appeal is whether the ALJ exceeded his authority in ordering respondent to pay for a king size Sleep Number bed, household cleaning supplies and increased internet service as medical treatment. The Board's jurisdiction to hear and determine this issue is not contested by the parties.

FINDINGS OF FACT

Claimant suffered a workers compensation injury on June 13, 2014, when he fell 25 feet into a grain pit, landing on cement, breaking his T12 vertebra, shattering his spinal cord and left elbow, and leaving him paralyzed from the waist down. Claimant described the bin as being like a basement, where the leg of the machine underneath takes the grain up to the top, putting it in a bin.

Claimant initially received medical treatment for his injuries at Stormont Vail and was transferred to Craig Hospital in Denver, Colorado. Claimant was hospitalized for five weeks due to a prohibition against weight-bearing on his elbow. Once claimant was released from Craig Hospital, he was placed at Coffey County Hospital because his home was not modified to accommodate his handicapped status. Claimant was released to return to his home in October 2014. When claimant's home remodeling was completed, and he was released to return home, he was prescribed an FES bike, which is an electric stimulation bike to stimulate his leg muscles.

Claimant testified he wheels his chair up to the FES bike and then has someone help him strap his legs in, attach straps around his calves and attach 12 electrodes, four to his hamstrings, four to his quads and four to his buttocks. He testified these electrodes must be placed in certain locations and placed correctly or they will burn him and fail to give a proper readout. It takes 20 minutes to hook him up and 20 minutes to unhook him. He rides this bike for an hour, and the attached electrodes transmit information via the internet to Craig Hospital so they can monitor claimant's progress.

The Hospital uploads new files via the internet to the bike on an almost daily basis. Claimant testified he would not be able to do his workout on the bike without the internet. If something was wrong with the bike and he had no internet, someone from the hospital would have to come from Denver to fix it. Because claimant has to use this bike for therapy he requires an increase in his internet bandwidth so it functions properly. Therefore, claimant had to increase his internet package at an increased cost.

After his bike ride, the electrodes must be cleaned with disinfectant wipes. Claimant requests reimbursement for the cost of those cleaning supplies and for cleaning supplies associated with twice a day required bowel stimulation. Claimant testified he has no bowel control so sometimes he has accidents before he gets to the bathroom and then he has to clean and disinfect the cushion of the seat on his wheelchair. Claimant testified these

situations require disinfectant wipes and disinfectant laundry detergent for his soiled clothing.¹ Claimant also uses hand sanitizer to keep his hands as clean as possible for when he takes care of his bathroom needs, to avoid infection.

Claimant testified he uses double the amount of household cleaning supplies since the accident as he has no control of his bodily functions and when he does manage to make it to the restroom there is usually extra clean up required. Claimant and his wife are vigilant about keeping things sanitary to avoid infection. Claimant testified he and his wife find it more effective to stock up on supplies every three months and then submit for reimbursement versus submitting every month, but respondent does not want to pay. Claimant's case manager assured him he would be reimbursed if he provided his receipts.

On the issue of home assistance, claimant's friend, Laci, and his nephew, Tyson, help him hook up to the bike everyday for his therapy. Claimant's wife cannot help because she works. Claimant pays Laci and Tyson each \$40 day for their help. Claimant was 100 percent independent when it came to transfers when he left Craig Hospital, but there were things he was still unable to do on his own. Hooking up to the FES bike is one of those things he cannot do by himself.

On the issue of the Sleep Number bed, claimant testified his current bed is a king-size Tempur-Pedic and is really soft, which makes it difficult for him to transfer on and off his bed. It also offers challenges at night when he has to change positions to avoid bed sores. Claimant testified: "... My left elbow when I roll to the left side, my left elbow still -- I mean, it still give me fits. To get up from a laid back position to setting up straight to transfer from my bed to my chair, I have to roll back over to my right side and use my right arm cause my left arm, my elbow, I mean, I can't --".² Claimant testified the Sleep Number 12 Flex King bed was prescribed by Jeff Sloyer, M.D., the physician authorized by the workers compensation insurance company to treat him on two separate occasions, but has yet to be approved. This bed allows for firmness and softness adjustments and for the bed to be raised and lowered. This bed was also recommended by claimant's physical therapist, Joan Kuhlmann, RPT. Claimant testified he was told when he left the hospital he might have to obtain a new bed with a firmer mattress.

PRINCIPLES OF LAW AND ANALYSIS

K.S.A. 2013 Supp. 44-501b(a)(b)(c) states:

(a) It is the intent of the legislature that the workers compensation act shall be liberally construed only for the purpose of bringing employers and employees within the provisions of the act. The provisions of the workers compensation act shall be

¹ Only claimant's clothes are washed with the disinfectant detergent.

² P.H. Trans. at 15.

applied impartially to both employers and employees in cases arising thereunder.

(b) If in any employment to which the workers compensation act applies, an employee suffers personal injury by accident, repetitive trauma or occupational disease arising out of and in the course of employment, the employer shall be liable to pay compensation to the employee in accordance with and subject to the provisions of the workers compensation act.

(c) The burden of proof shall be on the claimant to establish the claimant's right to an award of compensation and to prove the various conditions on which the claimant's right depends. In determining whether the claimant has satisfied this burden of proof, the trier of fact shall consider the whole record.

K.S.A. 2013 Supp. 44-510h(a) states:

(a) It shall be the duty of the employer to provide the services of a health care provider, and such medical, surgical and hospital treatment, including nursing, medicines, medical and surgical supplies, ambulance, crutches, apparatus and transportation to and from the home of the injured employee to a place outside the community in which such employee resides, and within such community if the director, in the director's discretion, so orders, including transportation expenses computed in accordance with subsection (a) of K.S.A. 44-515, and amendments thereto, as may be reasonably necessary to cure and relieve the employee from the effects of the injury.

The Kansas legislature has provided a definition of medical treatment in the statute, listing certain items to be included in the term. The statutory language is not all inclusive. Such a definition would be a practical impossibility. This leaves the more inclusive definition to case law. However, case law does not precisely define medical care or treatment. Treatment is "[a] broad term covering all the steps taken to effect a cure of an injury or disease; including examination and diagnosis as well as application of remedies."³ Medical compensation under K.S.A. 2013 Supp. 44-510h(a) includes "medical, surgical and hospital treatment, including nursing, medicines, medical and surgical supplies, ambulance, crutches, apparatus and transportation" to obtain medical treatment. An "apparatus" includes an "artificial member."⁴ The Board views medical care and medical treatment as synonymous.

It is problematic to "separate what is a reasonable medical necessity from what is dictated by convenience and/or lifestyle [because] these two categories can sometimes overlap."⁵ A claimant's "greater ease and comfort" and "all expenses associated with the

³ *Hedrick v. U.S.D. No. 259*, 23 Kan. App. 2d 783, 785, 935 P.2d 1083 (1997) (quoting Black's Law Dictionary 1502 (6th ed.1990)).

⁴ K.A.R. 51-9-2.

⁵ *Butler v. Jet TV*, No. 106,194, 1998 WL 229860 (Kan. WCAB Apr. 14, 1998).

accommodations that a disability may require" are not what the legislature envisioned as reasonable and necessary treatment.⁶

While the determination is fact-driven and situational, requests found to be reasonable and necessary medical treatment include modification to a home,⁷ placement in an assisted living facility,⁸ assistance for hygiene and grooming,⁹ a stair lift,¹⁰ modification to a vehicle to accommodate a claimant's injury,¹¹ a hot tub,¹² a computer,¹³ a mattress,¹⁴ and a custom-made brassiere.¹⁵

Case law also delineates instances where expense items have not been deemed as medical treatment. In *Carr*¹⁶, claimant was denied hospital expenses incurred after he took an overdose of pain medication. The court ruled these expenses were not "an ordinary and necessary result of the claimant's accident."

This Board Member finds claimant has satisfied his burden under K.S.A. 2013 Supp. 44-510h(a), that his requested medical supplies and the increased internet connection constitute medical care or treatment necessary to cure and relieve claimant from the effects of the injury. The cleaning supplies are for the benefit of claimant's present and future health and well being and are necessitated by the contamination created by claimant's injuries and resulting disabilities. The internet connection is required to assist both claimant and Craig Hospital in evaluating claimant's use of the FES bike and to accomplish any required updates to its use.

⁶ *Hedrick*, 23 Kan. App. 2d at 787.

⁷ *Froese v. Trailers & Hitches, Inc.*, No. 1,036,333, 2010 WL 3093219 (Kan. WCAB July 27, 2010).

⁸ *Butler v. Jet TV*, No. 106,194, 2004 WL 1058372 (Kan. WCAB Apr. 16, 2004).

⁹ *Morey v. Via Christi Health System*, No. 1,027,871, 2006 WL 2632034 (Kan. WCAB Aug. 14, 2006).

¹⁰ *Jardan v. Wal-Mart*, No. 1,048,563, 2012 WL 3279494 (Kan. WCAB July 23, 2012).

¹¹ *Froese v. Trailers & Hitches*, No. 1,036,333, 2008 WL 651685 (Kan. WCAB Feb. 29, 2008).

¹² *Fernandez v. Safelite Auto Glass*, No. 244,854, 2002 WL 31828620 (Kan. WCAB Nov. 20, 2002).

¹³ *Fletcher v. Roberson Lumber Co.*, No. 231,570, 1999 WL 195653 (Kan. WCAB Mar. 30, 1999).

¹⁴ *Conner v. Devlin Partners, LLC*, No. 1,007,224, 2005 WL 831913 (Kan. WCAB Mar. 11, 2005).

¹⁵ *Gorden v. IPB, Inc.*, Nos. 84,110 & 84,173 (Kansas Court of Appeals unpublished decision dated October 27, 2000).

¹⁶ *Carr v. Unit No. 8169*, 237 Kan. 660, 703 P.2d 751 (1985).

It is not disputed that both claimant's authorized treating physician and his physical therapist requested the specific bed claimant seeks. However, in this matter respondent does not dispute that claimant needs a new bed. The dispute is over which bed claimant is to receive. *Hedrick* involved an unusual twist in the medical versus non-medical dispute. If the car in *Hedrick* represented "medical treatment," then the ALJ had authority to enter the award, and the Board would have properly dismissed the appeal. On the other hand if a car was not "medical treatment," then the ALJ was without jurisdiction to enter the award, and the Board would not have dismissed the appeal.¹⁷

Neither the ALJ nor the Board faced this conundrum in this matter as both claimant and respondent agree claimant needs a bed as a form of medical treatment for this accident and resulting injuries. The dispute surrounds which bed is proper. Thus the dispute regarding whether the bed is "medical treatment" is avoided here. The ALJ merely needed to determine which bed was proper. As both the authorized treating physician and the physical therapist agree on which bed is proper, the decision by the ALJ to award the Sleep Number 12 Flex King bed was within his jurisdiction and review by the Board at this time would not be proper. Respondent's appeal of the ALJ's order on the bed is dismissed.

By statute, the above preliminary hearing findings and conclusions are neither final nor binding as they may be modified upon a full hearing of the claim.¹⁸ Moreover, this review of a preliminary hearing Order has been determined by only one Board Member, as permitted by K.S.A. 2013 Supp. 44-551(l)(2)(A), unlike appeals of final orders, which are considered by all five members of the Board.

CONCLUSIONS

After reviewing the record compiled to date, the undersigned Board Member concludes the preliminary hearing Order should be affirmed. Claimant has satisfied his burden of proving the requested medical supplies and internet connection constitute medical treatment necessary to cure and relieve claimant from the effects of the accident and resulting injuries suffered on June 16, 2014. The award of the Sleep Number 12 Flex King bed remains in full force and effect.

DECISION

WHEREFORE, it is the finding, decision and order of the undersigned Board Member that the Order of Administrative Law Judge Brad E. Avery dated January 16, 2015, is affirmed.

¹⁷ *Hedrick*, 223 Kan. App. 2d at 784.

¹⁸ K.S.A. 2013 Supp. 44-534a.

IT IS SO ORDERED.

Dated this _____ day of March, 2015.

HONORABLE GARY M. KORTE
BOARD MEMBER

c: James B. Biggs, Attorney for Claimant
jbiggs@cavlem.com
gbronson@cavlem.com

Jeffrey E. King, Attorney for Respondent and its Insurance Carrier
wcgroup@hamptonlaw.com
jeking@hamptonlaw.com

Brad E. Avery, Administrative Law Judge